

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

PATRICK WOODALL,

05-CV-181-BR

Plaintiff,

OPINION AND ORDER

v.

JO ANNE B. BARNHART,  
Commissioner of Social  
Security,

Defendant.

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**BROWN, Judge.**

Plaintiff Patrick Woodall brings this action for judicial review of a final decision of the Commissioner of Social Security denying his applications for disability insurance benefits (DIB) and supplemental security income payments (SSI) under Titles II and XVI of the Social Security Act. This Court has jurisdiction under 42 U.S.C. §§ 405(g) and 1383(c)(3).

For the reasons that follow, the Court **AFFIRMS** the Commissioner's final decision.

**BACKGROUND**

Woodall was born on September 17, 1962. He completed high school and worked as a short-order cook, in-home attendant for Senior and Disabled Services, taxi driver, and forklift operator. Tr. 82, 469.<sup>1</sup> Woodall last worked on June 15, 2000, when he was

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<sup>1</sup> Citations to "Tr." refer to the page(s) indicated in the official transcript of record filed with the Commissioner's Answer.

fired for reasons unrelated to his health or to any alleged functional impairment. Tr. 81.

Woodall asserts he became disabled on March 15, 2000, due to a ruptured disc with nerve damage causing severe pain in both legs, hot spots, and numbness. He also alleges he is unable to stand or to sit for long periods or to use his shoulders and arms to lift objects. He asserts he must lay down for short periods throughout the day. Tr. 81.

#### **DISABILITY ANALYSIS**

The initial burden of proof rests on the claimant to establish disability. *Roberts v. Shalala*, 66 F.3d 179, 182 (9<sup>th</sup> Cir. 1995). To meet this burden, a claimant must demonstrate an "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected . . . to last for a continuous period of not less than 12 months. . . ." 42 U.S.C §§ 423(d)(1)(A), 1382c(a)(3)(A).

The Commissioner has established a five-step sequential process for determining whether a person over the age of 18 is disabled within the meaning of the Act. *Bowen v. Yuckert*, 482 U.S. 137, 140 (1987). See also 20 C.F.R. §§ 404.1520, 416.920. Woodall challenges the ALJ's evaluation of the evidence and conclusion at Step Five.

To make a determination at Step Five, the ALJ must first assess the claimant's residual functional capacity (RFC). The claimant's RFC is an assessment of the sustained, work-related activities the claimant can still do on a regular and continuing basis despite his limitations. 20 C.F.R. §§ 404.1545(a), 416.945(a). See also Social Security Ruling (SSR) 96-8p.

The Commissioner then must determine whether the claimant is able to do any work in the national economy. *Yuckert*, 482 U.S. at 141-42. See also 20 C.F.R. §§ 404.1520(e),(f), 416.920(e),(f). Here the burden shifts to the Commissioner to show a significant number of jobs exist in the national economy that the claimant can do. *Yuckert*, 482 U.S. at 141-42. See also *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9<sup>th</sup> Cir. 1999). If the Commissioner meets this burden, the claimant is not disabled. 20 C.F.R. §§ 404.1520(f)(1), 416.920(f)(1).

#### **THE ALJ'S FINDINGS**

The ALJ found Woodall's ability to perform basic, work-related activities is limited by "severe spinal impairment." Tr. 23. The ALJ also found Woodall has "drug abuse/dependency," which causes mild limitations in his social functioning, his ability to maintain concentration, his persistence or pace, and his activities of daily living. Tr. 24.

The ALJ assessed Woodall's RFC as follows:

[T]he claimant retains the residual functional capacity to perform a reduced range of light and sedentary exertional level work. The claimant can lift/carry up to 20 pounds on an occasional basis and lift/carry up to 10 pounds frequently. He would need to apply safe lifting techniques. The claimant can stand/walk for two hours in an 8-hour workday. The claimant can sit for six hours in an 8-hour workday. The claimant is precluded from using his left leg to operate foot controls. Stooping, kneeling, crouching, balancing, crawling, and climbing ramps/stairs/ladders/ropes/scaffolds is limited to an occasional basis (maximum one-third of day). The claimant needs to avoid hazardous conditions, such as moving machinery, due to his medications.

Tr. 26-27.

The ALJ found Woodall could not perform any of the work he had done in the past, but the ALJ concluded Woodall retained the RFC to perform other work in the national economy. Tr. 28. The ALJ relied on testimony from an impartial vocational expert (VE), who opined a person of Woodall's age, education, past work experience, and RFC could work as a storage-rental clerk, automatic photo-developer, or charge-account clerk. Tr. 28.

The ALJ concluded Woodall was not disabled at any time through the date of the ALJ's decision and was not eligible for benefits under Titles II or XVI of the Social Security Act. Tr. 28-30.

### **STANDARD OF REVIEW**

The district court must affirm the Commissioner's decision if it is based on proper legal standards and the findings are supported by substantial evidence in the record as a whole. 42 U.S.C. § 405(g). "Substantial evidence means more than a mere scintilla but less than a preponderance; it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9<sup>th</sup> Cir. 1995).

The court must weigh all of the evidence whether it supports or detracts from the Commissioner's decision. *Martinez v. Heckler*, 807 F.2d 771, 772 (9<sup>th</sup> Cir. 1986). The Commissioner's decision, however, must be upheld even if the "evidence is susceptible to more than one rational interpretation." *Andrews*, 53 F.3d at 1039-40.

### **DISCUSSION**

Woodall contends the ALJ failed to assess accurately his RFC because the ALJ improperly evaluated the evidence and failed to develop the record fully. Woodall asserts the ALJ's errors led him to elicit legally inadequate testimony from the VE. Woodall also contends the ALJ failed to properly evaluate the role of substance abuse as required by the regulations.

## **I. Woodall's RFC**

Woodall contends the ALJ erred when he failed to accurately assess Woodall's RFC. Woodall specifically contends the ALJ improperly discredited his testimony and the medical-source statements of his treating physician, misinterpreted the findings of agency-reviewing physicians, and failed to order a consultative evaluation of Woodall's mental impairments.

### **A. Credibility Determination**

Woodall testified he has constant pain in his lower left back radiating to his left buttocks and left leg. Even with daily medications (including narcotics), the pain remains at a severity of 6 or 7 on a scale of 0 to 10 where 0 represents no pain and 10 represents unbearable pain. Tr. 450-51, 454, 456.

Woodall testified he has to lie down during the day about five minutes out of every hour if he has to do a lot of driving. Tr. 458-59. He can sit or stand for about 30 minutes at a time. Tr. 459-60. He can walk about 50 yards, and then he has to sit down to rest. Tr. 460. He spends most of his time alternating sitting and standing with hourly breaks to lie down. Tr. 461. The ALJ found Woodall's testimony was not wholly credible. Tr. 25.

The ALJ must provide clear and convincing reasons for discrediting a claimant's testimony regarding the severity of his symptoms. *Dodrill v. Shalala*, 12 F.3d 915, 918 (9<sup>th</sup> Cir. 1993).

*See also Smolen v. Chater*, 80 F.3d 1273, 1283 (9<sup>th</sup> Cir. 1996).

He may consider objective medical evidence and the claimant's treatment history as well as the claimant's unexplained failure to seek treatment or to follow a prescribed course of treatment. *Id.* at 1284. The ALJ may consider the claimant's daily activities, work record, and observations of physicians and third parties with personal knowledge about the claimant's functional limitations. *Id.* In addition, the ALJ may employ ordinary techniques of credibility evaluation such as prior inconsistent statements concerning symptoms and statements by the claimant that appear to be less than candid. *Id.* See also SSR 96-7p.

The ALJ found Woodall's testimony disproportionate to the objective medical findings. In January 1998, Mark Belza, M.D., performed a microdiscectomy to relieve Woodall's ongoing symptoms of S1 radiculopathy. Tr. 255. MRI studies in October 2000 and September 2001 showed a small recurrent, left-sided disc protrusion at L5-S1. Tr. 225-26, 258. The radiologist opined clinical correlation would be necessary to determine whether these findings were significant. Tr. 258.

Contemporaneous clinical findings did not support disabling symptoms. For example, in November 2000, Woodall reported he was essentially bedridden by chronic lower left-sided pain and got up only to prepare quick meals. David Stewart, M.D., found symmetrical muscle mass in the lower extremities with no wasting



on the left. Woodall demonstrated give-way weakness with sudden discontinuance of resistance throughout the left leg in a manner atypical of true muscle weakness and inconsistent straight-leg raises when sitting and lying down. Dr. Stewart, however, did not believe these were true signs of L5-S1 radiculopathy. 253-55.

Similarly in February 2002, Kent Yundt, M.D., found Woodall had normal muscle bulk and tone with full and symmetrical strength "except for clear giveaway weakness throughout the testing showing marked pain behavior." Tr. 251. Woodall demonstrated inconsistent pain responses with a positive Waddell's sign. He described relief by bending over in a manner inconsistent with the mechanical low-back condition he reported. He also reported bilateral leg pain in a manner inconsistent with the left-sided disc protrusion suggested by the MRI studies. Tr. 251-52.

Woodall then had a myelogram study that showed significant degeneration at L5-S1 with truncation of the S1 nerve root. At a follow-up visit, however, Dr. Yundt obtained an invalid strength examination due to give-way cogwheeling weakness throughout the left lower extremity. Tr. 250.

Woodall's treatment history also suggests his pain reports to treating sources could have been influenced by a motivation to obtain narcotics.

Woodall alleges disability beginning in March 2000, but he did not re-contact his neurosurgeon, Dr. Belza, until October 10, 2000. This corresponds roughly with his discharge from the care of his primary-care physician for failure to comply with a narcotic pain medication contract. Tr. 208, 217. Woodall reportedly agreed to undergo a repeat microdiscectomy. Tr. 225-26. A few days after Woodall obtained narcotics, Dr. Belza indicated Woodall was "not interested in surgery in that he wants to remain on narcotics." Tr. 223.

Woodall then was treated by John Rask, M.D., for pain management. Dr. Rask described Woodall as "quite manipulative" in his interactions and also self-advancing with his medication dosage and avoidance of in-person visits. Dr. Rask determined it was in Woodall's best interest to terminate treatment with narcotics "given the benign nature of his pain process" and "the tendency he appears to have to overuse." Tr. 245-46.

Woodall then established care with Jeffrey Absalon, M.D. Dr. Absalon declined Woodall's request to reinstate treatment with narcotics and recommended exercise and physical therapy. He noted Woodall's pain pattern did not appear to change after being off of narcotic pain medication. Tr. 279-80.

Woodall then established care with Joshua Haber, M.D., in April 2002. Dr. Haber initially declined to prescribe narcotics and instead administered a series of steroid injections into the

spine and sacroiliac joints. In September 2002, however, he noted these procedures had not given Woodall any notable benefit. He told Woodall that his options were chronic pain management or surgical intervention. Tr. 390. Woodall has relied primarily on narcotics and inactivity to manage his pain since that time.

Through frequent changes in providers, Woodall avoided potentially effective treatment approaches such as the one recommended by Ray Tatyrek, Ph.D. Dr. Tatyrek recommended a multidisciplinary program that included physical therapy, psychological counseling, and medical treatment rather than mere reliance on medication and inactivity. Tr. 266-70.

The ALJ also noted Woodall's work history reflected poorly on his credibility. For example, Woodall was not compelled to stop working by his alleged functional impairments. He alleged disability beginning March 15, 2000, and yet he continued to work until he was fired on June 15, 2000. Even then his termination did not reflect an inability to perform his work functions. Woodall, in fact, was fired for leaving his workplace without permission for the purpose of picking up his son. Tr. 81. He testified he lost his job as a care-giver when he was fired after being slapped by the elderly woman he was hired to assist. Tr. 444-45.

In addition, the ALJ pointed out that Woodall did not appear to be in pain or distress during office visits to doctors or at

the hearing contrary to his assertion of constant severe pain. Tr. 26. He also did not require a break to lie down during the hearing nor did he alternate positions to relieve any apparent pain.

In addition, Woodall is the sole provider for his 14 year-old son, was the primary care-giver for his terminally ill father until his death, and now takes care of his ill brother. The ALJ, therefore, reasonably could conclude these circumstances require Woodall to engage in activities that are inconsistent with the degree of functional limitation that he asserts.

Based on the foregoing, the Court finds the ALJ reasonably could conclude from the indications of Woodall's unreliable pain behavior, Woodall's manipulative interactions with medical sources, and Woodall's frequent changes to avoid providers who would not prescribe narcotics that he was not candid when describing his pain. The ALJ also reasonably could conclude Woodall is self-limiting his activity in a manner that is not medically necessary.

Accordingly, the Court concludes the ALJ did not err when he concluded Woodall's testimony was not wholly credible because the ALJ provided sufficient reasons supported by the record for doing so.

**B. Medical Source Statements**

Dr. Haber performed a consultation for low left-sided back pain in April 2002. He reviewed existing MRI and CT myelogram studies and treatment records and recommended epidural steroid injections and physical therapy. Tr. 398-400. As noted, Woodall did not experience any significant relief, and Dr. Haber, therefore, reinstated long-term pain management with methadone. Tr. 389-90, 394-97.

In November 2002, Dr. Haber completed a worksheet in which he indicated Woodall could lift and carry no more than five pounds, stand or walk for no more than 15 minutes at a time for a total of one hour in an eight-hour day, and sit for no more than 30 minutes at a time for a total of one hour in a workday. Tr. 291. He opined Woodall needed to lie down or to recline every 30 to 45 minutes for 10 to 15 minutes. Tr. 292. Dr. Haber later completed an identical worksheet in which he indicated Woodall's impairments remained essentially the same in July 2004. Tr. 416-17.

If a treating physician's opinion is not contradicted by another physician, the ALJ may only reject it for clear and convincing reasons. *Thomas v. Barnhart*, 278 F.3d 947, 956-57 (9<sup>th</sup> Cir. 2002). The ALJ may reject the treating physician's opinion in favor of the conflicting opinion of another treating or examining physician if the ALJ makes "findings setting forth

specific, legitimate reasons for doing so that are based on substantial evidence in the record." *Id.* at 957 (quoting *Magallanes v. Bowen*, 881 F.2d 747, 751 (9<sup>th</sup> Cir. 1989)).

The ALJ gave minimal weight to Dr. Haber's worksheet assessments because they were predominantly based on his unquestioning acceptance of Woodall's subjective statements. Tr. 26. Dr. Haber reviewed diagnostic images to reach his diagnosis of a disc protrusion, but he did not perform a physical capacities evaluation or consult such an evaluation by any other medical source before reaching his conclusions about Woodall's functional limitations. Instead Dr. Haber relied entirely on Woodall's subjective statements regarding his functional limits.

As noted, the ALJ found Woodall's subjective statements were disproportionate to the objective findings, and the ALJ stated clear and convincing reasons supported by the record for rejecting those statements as not wholly credible. An ALJ properly can reject a physician's opinion regarding disability when it is premised on the claimant's own subjective complaint of disabling pain that the ALJ already has discounted. *Fair v. Bowen*, 885 F.2d 597, 605 (9<sup>th</sup> Cir. 1989). See also *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9<sup>th</sup> Cir. 2001).

Woodall further objects to the ALJ's statement that other physicians "implicitly disagreed with Dr. Haber's course of treatment."

Tr. 26. The ALJ accurately found, however, that many treating and examining physicians declined to continue providing narcotics to Woodall. Other physicians also opined Woodall's use of long-term narcotics would be appropriate only as part of a comprehensive approach with physical therapy, training, and counseling.

Accordingly, the Court finds the ALJ did not err when he discounted the weight of Dr. Haber's opinions because the ALJ provided sufficient reasons supported by the record for doing so.

**C. RFC Assessments of Agency Consultants**

The Commissioner may rely on medical consultants to make findings of fact about the nature of a claimant's impairments and the severity of the claimant's functional limitations. 20 C.F.R. §§ 404.1527(f), 416.927(f). See also SSR 96-6p. Such reviewing sources do not treat or examine the claimant, and, therefore, their opinions are held to stricter standards and are given weight only to the extent that they are supported by the record and consistent with the record as a whole. SSR 96-6p.

Martin Kehrli, M.D., and Charles Spray, M.D., reviewed the medical evidence from all treating and examining sources in the record and concluded the evidence supported an RFC of light exertion with postural limitations. Tr. 231-35, 285-90. On the standard RFC worksheet, both consultants placed an "x" to indicate that Woodall is "limited in lower extremities."

Tr. 233, 287.

The ALJ apparently agreed with Drs. Kehrli and Spray because his RFC assessment included significant limitations on lifting, carrying, walking, standing, sitting, stooping, kneeling, crouching, crawling, balancing, and climbing, which are all activities that involve the use of the left leg. In addition, the ALJ found Woodall "is precluded from using his left leg to operate foot controls." Tr. 26.

Woodall contends the ALJ's RFC assessment did not accurately describe his left-leg limitations because the ALJ only focused on the limited use of Woodall's left foot. The Court, however, finds Woodall misstates the ALJ's RFC assessment.

Accordingly, the Court concludes the ALJ did not err in his RFC assessment of Woodall because the limitations in the RFC are supported by the record as a whole and, in particular, by the findings of Drs. Kehrli and Spray.

**D. Development of the Record**

Woodall contends the ALJ erred by failing to order a consultative evaluation to determine Woodall's mental capacity. Woodall, however, did not report mental impairments and has not complained of psychological symptoms to any treating or examining source. In fact, he does not argue here that he has severe mental impairments, but merely contends the ALJ should have



ordered a consultative evaluation before he determined Woodall has no severe mental impairments.

As noted, Dr. Tatyrek performed a psychological consultation in March 2002 as part of an evaluation for a pain-management program. Woodall reported a low level of depression and significant frustration with his medical care. On the Beck Depression Scale and Beck Anxiety Inventory, Woodall responded in a manner consistent with moderate levels of depression and anxiety. Tr. 268-69.

The ALJ considered Dr. Takyret's March 2002 psychological consultation. He noted Dr. Takyret's impression that Woodall was experiencing psychological distress with moderate anxiety and depression. The ALJ also pointed out that Dr. Takyret did not diagnose Woodall with a mental disorder nor identify any functional limitations associated with these symptoms. Tr. 23-24, 269.

An ALJ's duty to develop the record further is triggered only when there is ambiguous evidence or when the record is inadequate to allow for proper evaluation of the evidence. *Mayes v. Massanari*, 276 F.3d 453, 459-60 (9<sup>th</sup> Cir. 2001). The Court has not found any authority that extends the ALJ's duty to develop the record as to undiagnosed conditions or to conditions not asserted by the claimant. Thus, here the ALJ did not have a duty to develop the record of Woodall's psychological condition

in the absence of some evidence that he suffers from a mental disorder. The ALJ gave due consideration to Dr. Tatyrek's evaluation and the record as a whole; did not find the record ambiguous or inadequate to properly evaluate Woodall's psychological condition; and, therefore, reasonably concluded Woodall's psychological condition did not significantly impair his ability to perform basic work activities. Tr. 24.

## **II. Adequacy of the Vocational Evidence**

Woodall asserts the ALJ's defective RFC assessment led him to elicit testimony from the VE based on a hypothetical that did not accurately reflect all of Woodall's limitations.

At Step Five of the sequential process, the Commissioner must show the claimant can do other work that exists in the national economy. *Andrews v. Shalala*, 53 F.3d at 1043. The Commissioner can satisfy this burden by eliciting the testimony of a VE with a hypothetical question that sets forth all of the claimant's limitations. *Id.* The assumptions in the hypothetical question must be supported by substantial evidence. *Id.*

Woodall asserts the ALJ's hypothetical question did not include limitations in Woodall's mental capacities and his left lower extremity. The ALJ's hypothetical to the VE, however, accurately reflected the findings in his RFC assessment. Tr. 26-27, 469-70.

Accordingly, the Court concludes the ALJ did not err because his hypothetical to the VE accurately reflected all of Woodall's functional limitations reasonably supported by the record.

### **III. Role of Drug Dependency**

Woodall argues the ALJ failed to evaluate properly the role of substance abuse in Woodall's condition.

A claimant cannot be considered disabled if drug addiction or alcoholism is a contributing factor material to the determination of disability. 42 U.S.C. §§ 423(d)(2)(C), 1382c(a)(3)(J). *See also Bustamante v. Massanari*, 262 F.3d 949, 955 (9<sup>th</sup> Cir. 2001). If the ALJ finds a claimant disabled and there is medical evidence of drug dependency in the record, the ALJ must follow a particular procedure for determining whether drug addiction is a contributing factor material to the finding of disability. 20 C.F.R. §§ 404.1535, 416.935. The implementing regulations and governing authority make clear, however, that a finding of disability must be made before the ALJ is required to engage in the procedure for determining whether substance abuse was a material factor. *Bustamante*, 262 F.3d at 955.

Here the ALJ did not find Woodall disabled even while dependent on drugs. In fact, the ALJ found Woodall's drug dependency caused only mild limitations in Woodall's psychological functioning; *i.e.*, social functioning,

concentration, persistence or pace, and activities of daily living. Tr. 24. Thus, the Court finds the ALJ did not err.

**CONCLUSION**

For these reasons, the Court **AFFIRMS** the decision of the Commissioner and **DISMISSES** this matter.

IT IS SO ORDERED.

DATED this 27th day of March, 2006.

/s/ Anna J. Brown

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ANNA J. BROWN  
United States District Judge